

**Department of Toxic Substances Control
HAZARDOUS WASTE MANAGEMENT PROGRAM
MANAGEMENT MEMO DOCUMENT**

MANAGEMENT MEMO: #94-010-R-MM

TITLE: **Regulating U.S. Environmental Protection Agency (EPA)
Contractor's Access to Department of Toxic
Substances Control (DTSC) Facility Files**

AFFECTED PROGRAMS: **Statewide Compliance Division,
State Regulatory Programs Division,
Permitting Division**

BACKGROUND/ISSUE:

U.S. EPA and contractors hired by U.S. EPA may request access to DTSC's facility files in their preparations for inspections and file reviews. Granting those requests could provide U.S. EPA or U.S. EPA contractors with access to confidential information, such as proprietary, trade secret, enforcement confidential information, or other types of confidential information protected from disclosure under one or more privileges specified in law.

U.S. EPA has agreed to honor any State request to protect the confidentiality of information furnished by the State provided: (1) the State marks the document as confidential; (2) the State offers a rationale for the claim of confidentiality; and (3) U.S. EPA has the authority under the federal Freedom of Information Act (FOIA) and 40 Code of Federal Regulations (CFR), Part 2, to withhold release of that information [Memorandum of Agreement (MOA§IV.F.3): State of California, DTSC, and U.S. EPA, Region IX].

U.S. EPA will not maintain the confidentiality of information obtained from the State unless it is exempt from disclosure under 40 CFR, Part 2.

ACTION:

Any information obtained or used in the administration of the authorized Resource Conservation and Recovery Act (RCRA) program must be made available to U.S. EPA or U.S. EPA contractors upon request and without restriction, except as otherwise explained in this management memo. If the information sought by U.S. EPA has been submitted to the State under a claim of confidentiality (e.g., trade secret), the State will mark the documents confidential and provide the reason(s) for that designation to U.S. EPA.

When a request is submitted by U.S. EPA or one of its contractors for a specific facility file, the DTSC staff person assigned to that facility shall review the entire file and determine which documents are, or could be, considered confidential.

If there are no confidential documents, the entire file can be reviewed without restriction.

If there are portions of a file that are confidential, DTSC shall identify to U.S. EPA or its contractors those documents that DTSC deems confidential. If DTSC determines that a document is confidential for reasons not included under the FOIA, DTSC shall remove that document from the file before that file is reviewed by U.S. EPA or its contractor. This is necessary to protect the confidentiality of documents that U.S. EPA cannot protect from disclosure. Consultation with the Office of Legal Counsel and Investigations (OLCI) for FOIA determination is recommended.

CONTACT:

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This management memo is intended to provide guidance on access to confidential information. However, this Management Memo does not replace or supersede relevant statutes and regulations. The information contained in this Management Memo is based upon the statutes and regulations in effect as of the date this Management Memo was signed. Interested parties are advised to keep apprised of subsequent changes to relevant statutes and regulations.

This management memo expires five years from the date of signature.

August 2, 2002 _____
Date

[original signed by Watson Gin] _____
Watson Gin
Deputy Director